

Diseased Animals, Slaughter of Diseased Animals. Liability of State, Compensation to Owners of Slaughtered Animals. Appropriation, Effect of Appropriation.

Under the provisions of Chap. 68, Session Laws Thirteenth Legislative Assembly, an appropriation of \$8,000 for the year ending March 1, 1914, and an appropriation of \$6,000 for the year ending March 1, 1915, for the purpose of paying to owners of diseased animals, slaughtered by the state, that portion of liability assumed by the state; the separate appropriations for both years are to be considered as one appropriation for a term and claims for animals slaughtered by the state are to be paid in the order in which they are filed until the entire appropriation is exhausted.

September 4th, 1913.

Hon. William Keating,
State Auditor,
Helena, Montana.

Dear Sir:

On August 28th, 1913, you addressed this office as follows:

"Referring to Chap. 68 of the Session Laws of 1913, am I to understand that horses and cattle slaughtered in 1913 after the appropriation for that year of \$8,000 had been exhausted, may be paid out of the 1914 appropriation of \$6,000 after March 1st, 1914?"

In my judgment the object sought to be attained by the enactment of Chap. 68, Session Laws of the Thirteenth Legislative Assembly, was to recompense the owners of diseased animals when killed by the state as provided by law. The law fixes a basis for the valuation of such slaughtered animals and provides that they shall be paid for one-half from the funds appropriated by this act, and one-half from the general funds of the county where said animals are killed. That the provisions of the act might be carried out in so far as the state's liability is concerned, Sec. 6 of the act appropriated out of any money in the state treasury not otherwise appropriated the sum of \$8,000 for the year ending March 1st, 1914, and the sum of \$6,000 for the year ending March 1st, 1915. So far as I am aware, our supreme court has construed similar appropriation acts but once, and that in the case of *State v. Cook*, 14 Montana, 332, and it was there held that while there was a special appropriation for each of the two years, that the appropriation was for a specific purpose and as such subject to any demands and liabilities that might be incurred by the state's agents during the whole period that it was intended by the legislature that the appropriation should continue. It was held that any other construction would prevent the state from paying its legal obligations and embarrass it in carrying out the enterprises contemplated by the legislature in enacting such appropriation laws. Making use of the doctrine of this case as a basis for an opinion to you upon the proposition submitted, I am of the opinion that the appropriation made by our legislature covering a period of two years and amounting in all to \$14,000 was an appropriation for a specific purpose, namely, that the owners of diseased animals that shall be killed as provided by law shall have recompense therefor, as provided in the act, and that \$8,000 of such appropriation shall be available for such purpose during the fiscal year 1913, and \$6,000 thereof shall be available during the fiscal year 1914, and that these two sums taken together shall be subject to the demands made against the funds from time to time during the entire period covered by the appropriation. Claims should therefore be paid in the order in which they are presented, without regard to the time the animals for which the claim is made were slaughtered, except that it should be shown that the claim arose at some time during the two year period covered by the act—until the \$8,000 for the fiscal year 1913 has been exhausted, and that when the appropriation made for the fiscal year 1914 becomes available, payment of claims may be resumed in the order of their filing in your office, and this course pursued until, if such be necessary, the entire appropriation for both years has been exhausted.

Yours very truly,
D. M. KELLY,
Attorney General.